UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:	PROMESA Title III
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO et al., Debtors.[1]	Case No. 17-3283-LTS (Jointly Administered)

OPINION AND ORDER DENYING MOTIONS FOR A STAY PENDING APPEAL FILED BY (I) FEDERACIÓN DE MAESTROS DE PUERTO RICO, INC., GRUPO MAGISTERIAL EDUCADORES(AS) POR LA DEMOCRACIA, UNIDAD, CAMBIO, MILITANCIA Y ORGANIZACIÓN SINDICAL, INC., AND UNIÓN NACIONAL DE EDUCADORES Y TRABAJADORES DE LA EDUCACIÓN, INC., AND (II) COOPERATIVA DE AHORRO Y CRÉDITO ABRAHAM ROSA, COOPERATIVA DE AHORRO Y CRÉDITO DE CIALES, COOPERATIVA DE AHORRO Y CRÉDITO DE RINCÓN, COOPERATIVA DE AHORRO Y CRÉDITO VEGA ALTA, COOPERATIVA DE AHORRO Y CRÉDITO DR. MANUEL ZENO GANDÍA, AND COOPERATIVA DE AHORRO Y CRÉDITO DE JUANA DÍAZ

[1] The Debtors in these Title III cases, along with each Debtor's respective bankruptcy case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

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LAURA TAYLOR SWAIN, United States District Judge

Before the Court are the *Teachers' Associations' Motion for Stay Pending Appeal Regarding: Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority* (Docket Entry No. 19969 in Case No. 17-3283)[2] (the "Associations Motion"), filed by Federación de Maestros de Puerto Rico, Inc., Grupo Magisterial Educadores(as) por la Democracia, Unidad, Cambio, Militancia y Organización Sindical, Inc., and Unión Nacional de Educadores y Trabajadores de la Educación, Inc. (collectively, the "Associations"), and the *Credit Unions' Joint Motion for Stay Pending Appeal of Order and Judgment Confirming Modified Eighth Amended Title III Plan of Adjustment of the Commonwealth of Puerto Rico, et. al.* (Docket Entry No. 20035) (the "Cooperativas Motion" and, together with the Associations Motion, the "Motions"), filed by Cooperativa de Ahorro y Crédito Abraham Rosa, Cooperativa de Ahorro y Crédito de Ciales, Cooperativa de Ahorro y Crédito de Rincón, Cooperativa de Ahorro y Crédito Vega Alta, Cooperativa de Ahorro y Crédito Dr. Manuel Zeno Gandía, and Cooperativa de Ahorro y Crédito de Juana Díaz (the "Cooperativas" and, together with the Associations, the "Movants"). The Motions each request entry of an order staying the *Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority* (Docket Entry

[2] All docket entry references herein are to entries in Case No. 17-3283, unless otherwise specified.

No. 19813) (the "Confirmation Order"),[3] pursuant to which the Court confirmed the *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.*, (Docket Entry No. 19784) (the "Plan of Adjustment" or "Plan"), pending Movants' respective appeals (the "Appeals").

Oppositions to the Motions have been filed by Salud Integral de la Montaña, Inc. (Docket Entry Nos. 20077, 20112), Finca Matilde, Inc. (Docket Entry No. 20079), the PSA Creditors (Docket Entry Nos. 20081, 20116),[4] and the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") as the sole Title III representative of the Commonwealth of Puerto Rico ("Puerto Rico" or the "Commonwealth") (Docket Entry No. 20085 (the "Oversight Board Response to Associations"); Docket Entry No. 20115 (the "Oversight Board Response to Cooperativas")).[5] Replies in further support of the Motions were filed by the Associations (Docket Entry No. 20145) (the "Associations Reply") on February 15,

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[3] The Confirmation Order incorporates by reference the *Findings of Fact and Conclusions of Law in Connection with Confirmation of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority* (Docket Entry No. 19812) (the "Findings of Fact and Conclusions of Law" or "FFCL"), entered contemporaneously with the Confirmation Order. (See Confirmation Ord. ¶ 3.)

[4] The "PSA Creditors," as that term is defined in their opposition brief, refers collectively to the Ad Hoc Group of Constitutional Debtholders, the Lawful Constitutional Debt Coalition, the QTCB Noteholder Group, the Ad Hoc Group of General Obligation Bondholders, Assured Guaranty Corp. and Assured Guaranty Municipal Corp., National Public Finance Guarantee Corporation, Financial Guaranty Insurance Company, and Ambac Assurance Corporation.

[5] Joinders in opposition to the Motions have been filed by AmeriNational Community Services, LLC as servicer for the GDB Debt Recovery Authority (Docket Entry Nos. 20087, 20118), and the Official Committee of Unsecured Creditors (the "UCC") (Docket Entry Nos. 20088, 20119).

2022, and the Cooperativas (Docket Entry No. 20159 (the "Cooperativas Reply to Oversight Board") and Docket Entry No. 20161), on February 17, 2022.

The Court has considered carefully all of the arguments and submissions made in connection with the Motions. This Court has jurisdiction of these matters pursuant to 48 U.S.C. § 2166. For the following reasons, the Motions are denied.

I.

BACKGROUND[6]

A. The Plan of Adjustment

On January 18, 2022, the Court approved the Plan of Adjustment for the Commonwealth, the Puerto Rico Public Buildings Authority ("PBA"), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS" and, together with the Commonwealth and PBA, the "Debtors"). The Plan, which is the culmination of years of litigation, negotiation, and mediation, reflects negotiated resolutions of disputes with numerous key creditor constituencies. It resolves tens of billions of dollars in debt, deals with sixty-nine classes (not counting sub-classes) of claims including claims based on bonds, public pension liabilities, claims stemming from various lawsuits against the Debtors, claims arising under federal law, and many others. The Plan also includes settlements of a broad range of disputes, including claims about the validity of bonds issued by the Commonwealth and its instrumentalities. If the Plan is implemented, the Commonwealth's general obligation and

[6] The Court assumes general familiarity with the factual and procedural background leading up to confirmation of the Plan of Adjustment. (See generally FFCL.) Capitalized terms used but not defined herein have the meanings assigned to them in the FFCL or in the Plan.

guaranteed debt will total about $7.4 billion, which represents a substantial and meaningful reduction of the Commonwealth's approximately $30.5 billion of prepetition debt associated with those borrowings. Further, implementation of the Plan will eliminate all ERS and PBA debt. (See FFCL ¶ 206.) The Plan also preserves the accrued pension rights of Puerto Rico's current and former public servants and seeks to ensure the funding of ongoing pension liabilities through the creation of a pension reserve trust. (Id. ¶ 131.) The herculean task of the formulation of the confirmable Plan of Adjustment was accomplished with the substantial aid of the extraordinary efforts of the team of judicial mediators who facilitated negotiations among key stakeholders to resolve numerous complex disputes. (Id. ¶ 16.)

On May 31, 2019, the Oversight Board entered into a plan support agreement with holders of about $3 billion of General Obligation ("GO") and PBA Bond Claims, which was later replaced on February 9, 2020, with an agreement encompassing over $10 billion in Claims (the "2020 PSA"). (See id. ¶¶ 17, 19.) On June 7, 2019, the Oversight Board reached an agreement with the Retiree Committee regarding the treatment of accrued retirement system benefits under the Plan, as well as a plan support agreement with the American Federation of State, County and Municipal Employees regarding the return of contributions of all public employees to the ERS and modifications to a collective bargaining agreement pursuant to the Plan. (See id. ¶ 18.) After further negotiations with PSA Creditors, on February 23, 2021, the Oversight Board announced the termination of the 2020 PSA and the execution of an initial 2021 plan support agreement (the "Initial PSA") dated February 22, 2021, between the Oversight Board (on behalf of the Debtors), and the initial GO/PBA PSA Creditors. (See id. ¶¶ 20-23.)

Building on the progress achieved by the Initial PSA, the Oversight Board entered into a stipulation with certain ERS bondholders on March 9, 2021 (id. ¶ 24), and a separate plan

support agreement with the holders and insurers of bonds issued by the Puerto Rico Highways and Transportation Authority ("HTA") and the Puerto Rico Convention Center District Authority ("CCDA") on May 5, 2021 (the "HTA/CCDA PSA"). (Id. ¶ 25.) The Initial PSA was then amended on July 12, 2021, to include the UCC, culminating in a plan support agreement that contemplated, among other things, the reduction of Commonwealth's debt by approximately 62%, from $90.4 billion to $34.1 billion (the "GO/PBA PSA"). (Id. ¶ 27.) The gains achieved by the HTA/CCDA PSA and the GO/PBA PSA were further augmented when, on July 27, 2021, the Oversight Board entered into a plan support agreement concerning the Puerto Rico Infrastructure Financing Authority ("PRIFA") and the claims and disputes of creditors in connection with PRIFA (the "PRIFA PSA"). (Id. ¶ 28.) Together, these agreements were reflected in the terms of the Plan that was ultimately confirmed by the Court.

B. Treatment of Pension Rights under the Plan

Under the Plan, retirees (who are receiving pensions or annuities) and other participants who have accrued rights to receive future pensions or annuities in the ERS, Judiciary Retirement System ("JRS"), or Teachers Retirement System ("TRS") are entitled to receive their full pension benefits on account of their allowed pension claims, subject to a "freeze" of any existing right to accrue post-Effective Date defined benefit pension benefits and the elimination of post-Effective Date cost of living adjustments ("COLAs"). (See Plan §§ 55.1-55.9.) For each such class of creditors in the Plan, the Plan recognizes that all Commonwealth laws concerning employee pension and other benefits are preempted by PROMESA to the extent they are inconsistent with the treatment of the relevant claims under the Plan. (See Plan §§ 55.1(b), 55.2(b), 55.3(b), 55.4(b), 55.5(b), 55.6(b), 55.7(b), 55.8(c), 55.9(c).) The Plan provides that the contractual rights of such TRS and JRS participants to accrue post-Effective Date pension are

"deemed rejected pursuant to section 365(a) of the Bankruptcy Code." (Plan §§ 55.8(b), 55.9(b).) For the claims of active TRS participants, the Plan provides applicable pension benefits on account of service before May 3, 2017 (the commencement date of the Commonwealth's Title III case), and after May 3, 2017, on the terms set forth in Exhibit F-1 to the Plan. (Plan § 55.9(a)(i).)

C. The Court's Rulings Concerning Act 53-2021

Act 53-2021 ("Act 53") was enacted by the Commonwealth to permit the issuance of the securities contemplated by the Plan, but the authority provided by Act 53 was expressly conditioned on elimination of a provision (the "Monthly Benefit Modification") of the then-existing version of the proposed Plan that would have reduced pension payments for retirees who receive pension benefits in excess of $1500 per month. The Oversight Board eliminated the Monthly Benefit Modification from the proposed Plan, and it requested rulings from the Court confirming that elimination of the Monthly Benefit Modification satisfied Act 53's conditions and permitted the issuance of the securities pursuant to the Plan. (See *Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order (i) Approving Form of Notice of Rulings the Oversight Board Requests at Confirmation Hearing Regarding Act 53-2021 and (ii) Scheduling Objection Deadline*, Docket Entry No. 19002.)

Several parties objected to those proposed rulings and argued, among other things, that the Plan's "freeze" of pension accruals and its elimination of COLAs were inconsistent with Act 53 and that Act 53 therefore proscribed issuance of the securities unless those provisions were eliminated from the Plan. (See, e.g., *Objection to Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order (i) Approving Form of Notice of Rulings the Oversight Board Requests at Confirmation Hearing Regarding Act 53-*

2021 at Docket No. 19002 and Request to Be Heard ¶ 49, Docket Entry No. 19180 (the "Associations Objection") ("It would be illogical to interpret [Act 53] as if the Legislative Assembly only intended to condition the issuance of new debt to the elimination of the Monthly Benefit Modification and still allow the [Oversight Board] to implement a Plan of Adjustment that imposes other cuts and freezes to pensions.")). The Court ultimately overruled all such objections and held that Act 53's plain text did not prohibit the Plan's "freeze" of pension accruals and elimination of COLAs, and Act 53 therefore authorized the Commonwealth to issue the bonds and contingent value instruments contemplated in the Plan. (See FFCL ¶ 90 & n. 25.)

II.

DISCUSSION

The Motions each request entry of an order staying the effectiveness of the Confirmation Order pending resolution of Movants' respective Appeals. In reviewing an application for a stay pending appeal, a court must consider the following four factors:

> (1) [W]hether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos., 996 F.3d 37, 44 (1st Cir. 2021) (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." Nken v. Holder, 556 U.S. 418, 433–34 (2009). The first two of the applicable factors are the "most critical." Id. at 434-35 ("It is not enough that the chance of success on the merits be 'better than negligible.' . . . By the same token, simply showing some 'possibility of irreparable injury,' . . . fails to satisfy the second factor." (citations omitted)). However, "'[t]he sine qua non

[of the applicable standard] is whether the [movants] are likely to succeed on the merits.'" Acevedo–García v. Vera–Monroig, 296 F.3d 13, 16 (1st Cir. 2002) (quoting Weaver v. Henderson, 984 F.2d 11, 12 (1st Cir. 1993)).

1. Whether Movants Are Likely to Succeed on Appeal

i. Associations

The Associations Motion identifies three bases for objecting to the Confirmation Order. First, the Associations contend that the Court erred in determining that Act 53 authorizes the issuance of securities by the Plan. Second, the Associations argue that the Court erred in determining that the Plan provides a basis for the preemption of certain Commonwealth statutes that impose pension-related obligations on the Commonwealth, and that the Plan therefore cannot freeze pension accruals under public employees' defined benefit plans and prospectively eliminate COLAs. Third, the Associations contend that the Plan lacks essential enabling legislation that is required to implement a defined contribution retirement plan for those employees.

With respect to Act 53, the plain meaning of that statute was addressed thoroughly in the Findings of Fact and Conclusions of Law issued in connection with the Confirmation Order, and the Court declines to repeat its analysis here. (See FFCL ¶ 90 & n. 25.) In short, the operative provisions of Act 53 condition authority to issue securities under the Plan on the elimination of the Monthly Benefit Modification. The Monthly Benefit Obligation was eliminated from the version of the Plan that was ultimately confirmed. Moreover, Act 53 only concerns accrued pension rights of pension plan participants and retirees; Act 53's plain text is clear that the statute does not prohibit the Plan's defined benefit "freeze" and the prospective elimination of COLAs. (Id.)

As to the preemption of pension-related Commonwealth laws that provide for continued accruals under Commonwealth defined benefit plans, the Associations contend that the Court improperly concluded that Commonwealth laws that provide for continued accruals under Commonwealth defined benefit plans are preempted by the confirmation of the Plan. (See generally Assocs. Mot. ¶¶ 32-54.) The Associations argue that the Commonwealth pension laws are not inconsistent with PROMESA or with the Plan (id. ¶¶ 38-41), and that the recognition of the laws' preemption in the Plan and the Confirmation Order is, in essence, an unauthorized usurpation of the power of Puerto Rico's legislative assembly to repeal existing laws. (Id. ¶¶ 49, 53.) The Associations argue that the Plan is thus inconsistent with Commonwealth law and is not feasible, and that it therefore fails to meet the PROMESA requirements that a debtor "not [be] prohibited by law from taking any action necessary to carry out the plan," that the debtor obtain "any legislative, regulatory, or electoral approval necessary under applicable law in order to carry out any provision of the plan," and that the plan be feasible.[7] 48 U.S.C.A. § 2174(b)(3), (5), (6) (Westlaw through P.L. 117-80).

The Associations' argument that the Plan cannot preempt otherwise valid Commonwealth laws misconceives the role of section 4 of PROMESA, which provides that the "provisions of this chapter shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this chapter." 48 U.S.C.A. § 2103 (Westlaw through P.L. 117-80). While the Associations correctly note that the Plan is not a "provision[] of

[7] In a single two-sentence paragraph, the Associations also argue that the Plan violates section 201(b)(1)(C) of PROMESA because it does not preserve adequate funding for the public pension system. That argument was not raised by the Associations in a timely objection prior to confirmation of the Plan, and it therefore has been forfeited. See Iverson v. City of Bos., 452 F.3d 94, 102 (1st Cir. 2006) ("We have held, with echolalic regularity, that theories not squarely and timely raised in the trial court cannot be pursued for the first time on appeal.").

[PROMESA]" and that the text of PROMESA does not specifically speak to the validity of the government's pension obligations, PROMESA operationalizes aspects of the Plan in a manner that prevails over inconsistent Commonwealth laws pursuant to section 4. See 48 U.S.C. § 2161(a) (incorporating certain provisions of the Bankruptcy Code, including, inter alia, sections 365, 944, 1123(a)(5), and 1123(b) of the Bankruptcy Code, into PROMESA); 11 U.S.C. §§ 365(a) (authorizing the rejection of executory contracts); 944(b) (declaring that confirmation of a plan results in the discharge of debts); 1123(a)(5) (authorizing a plan to include "adequate means for the plan's implementation" notwithstanding "otherwise applicable nonbankruptcy law"); 1123(b)(2) (stating that a plan may provide for the rejection of executory contracts). Accordingly, under certain conditions, PROMESA permits debtors to reject contracts and discharge debts, and section 4 of PROMESA provides that the exercise of those statutory powers provided by federal law prevails over inconsistent territorial and state laws.

The Plan contemplates that any post-Effective Date rights to accrue additional defined benefits under the TRS are rejected pursuant to the Bankruptcy Code. (See Plan § 55.9(b).) Prior to entry of the Confirmation Order, the Associations did not address the legal significance of or authority for that rejection of expected future pension rights, other than to "reserve the right to file proofs of claim on behalf of [their] members for any damages arising from the rejection of their contractual right to pension benefits and to fully litigate such claims to their conclusion." (Assocs. Obj. at 30.)[8] In fact, the Associations' objections to the Plan and

[8] At the hearing concerning Act 53 and the Associations Objection, the Associations' response to the Oversight Board's arguments concerning rejection of pension rights did not meaningfully address the issue either. (See Nov. 17, 2021, Hr'g Tr. 45:22-46:2 ("Finally, Your Honor, the Board also states that there is no need for the enabling legislation, because section 365 of PROMESA allows the [rejection] of future obligations to teachers, but here the issue is whether the Plan of Adjustment meets the enabling legislation to implement the provisions of the Plan.").)

Confirmation Order appeared to agree that the pension obligations are contractual obligations under Commonwealth law. (See Assocs. Obj. ¶ 20; *Objection to Response of the Financial Oversight and Management Board In Accordance with Order Regarding Certain Aspects of Motion for Confirmation of Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al., at Docket No. 19567 (Corrected at Docket No. 19574)* ¶¶ 41, 48, Docket Entry No. 19606 (stating that Asociación de Maestros de P.R. v. Sistema de Retiro para Maestros de P.R., 190 DPR 854 (P.R. 2014) held that the alteration of pension rights was prohibited by "Article II, Sec. 7 of the Commonwealth Constitution that bars the impairment of contractual obligations").)

In the Associations Reply, the Associations now contend that "there has not been a request to reject pension obligations under Section 365 of the Bankruptcy Code pursuant to Rule 6006 and 9014 of Bankruptcy Procedure." (Assocs. Reply ¶ 36.) That argument ignores the plain text of the Code and the Federal Rules of Bankruptcy Procedure, which permit a plan to provide for the rejection of executory contracts without a separate motion. See 11 U.S.C. § 1123(b)(2) (stating that a plan may, "subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section"); Fed. R. Bankr. P. 6006(a) (providing that "[a] proceeding to assume, reject, or assign an executory contract or unexpired lease, *other than as part of a plan*, is governed by Rule 9014" (emphasis added)); see also 10 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 6006.01[2][a] (16th ed. 2021) ("[T]he overwhelming majority, and better reasoned, view is that, *except for assumption or rejection as part of a plan*, the trustee can manifest the intention to assume or reject an executory contract or unexpired lease only by formal motion filed in accordance with the requirements of Rules 6006(a), 9014 and

9013." (emphasis added)). The Plan and the Disclosure Statement made it clear that the Plan provides for the rejection of the Commonwealth's contractual obligations to permit further accruals under the TRS defined benefit plan. (See Plan § 55.9(b).) The Plan explicitly provides for the cessation of rights to accruals under the TRS defined benefit plan. (See Plan § 55.9.) Interested parties therefore had notice of those terms of the Debtors' proposed plan.

Furthermore, as set forth in the FFCL, "[o]bligations arising from Commonwealth statutes, including statutes providing employees the right to accrue pension or other retirement benefits, give rise to claims which can be impaired and discharged pursuant to the Plan." (FFCL ¶ 153 (citing 11 U.S.C. § 101(5)(A); Rederford v. U.S. Airways, Inc., 589 F.3d 30, 35-36 (1st Cir. 2009); In re Fin. Oversight & Mgmt. Bd. for P.R., Case No. 17 BK 3283-LTS, 2021 WL 5024287, at *8-9 (D.P.R. Oct. 29, 2021)).) The disposition of these claims is set forth in the Plan and Confirmation Order, and any Commonwealth obligations to recognize the further accrual of statutory pension obligations are preempted to the extent they are inconsistent with the relevant provisions of the Plan. Notwithstanding the Associations' arguments to the contrary, the foregoing treatment of pension obligations does not require reference to or use of the mechanism for the review of Commonwealth legislation set forth in section 204(a) of PROMESA, 48 U.S.C. § 2144(a).

As to the Associations' argument that enabling legislation is required to "change the nature of the [Commonwealth's] retirement systems" (Assocs. Mot. ¶ 66), the prospective elimination of defined benefit accruals and cost of living adjustments are, consistent with the preemption rationale explained above and in the Confirmation Order and FFCL, logical results of the rejection and discharge of ongoing obligations under federal law. The establishment of provisions detailing how such claims are to be treated and handled following the Effective Date

is authorized by section 1123(a) of the Bankruptcy Code. See 11 U.S.C. § 1123(a)(3) (providing that a plan "shall . . . specify the treatment of any class of claims or interests that is impaired under the plan"); 1123(a)(5) (providing that a plan "shall . . . provide adequate means for the plan's implementation").

The Associations are thus unlikely to prevail on appeal.

ii. Cooperativas

The Cooperativas assert that the Court erred in confirming the Plan over their objection for three reasons. First, the Cooperativas argue that the impairment and discharge of their claims arising from their purchase and ownership of bonds issued by the Debtors violates the Takings Clause of the United States Constitution. (Cooperativas Mot. ¶¶ 8-10, 13 ("The gist of the takings claim of the Credit Unions . . . is the government['s] regulatory compulsion over the Credit Unions of value impaired investments that were knowingly issued by the Commonwealth while in insolvency. This is a per se or physical taking that cannot be erased or discharged in a bankruptcy proceeding . . . .").) Second, the Cooperativas argue that a discharge of the Commonwealth's debts is inequitable due to the Commonwealth's alleged "dishonesty, fraud and disregard of [its] fiduciary duties." (Id. ¶ 14 ("Discharge, its legal principles and factual surroundings are equitable in nature. The Order Confirming the Plan should not foster debtor's dishonesty and fraud.").) Third, the Cooperativas argue that the Court's dismissal of the Cooperativas' claims in the case captioned Cooperativa de Ahorro y Crédito Abraham Rosa v. Commonwealth of Puerto Rico, Adv. Proc. No. 18-00028 (the "Cooperativas Adversary Proceeding")[9] is not a final and unappealable judgment, and the Court therefore should not have

[9] In the Cooperativas Adversary Proceeding, the Cooperativas asserted several claims arising from their allegations that the Commonwealth and others unlawfully induced and compelled the Cooperativas to purchase government-issued bonds, thereby appropriating

referenced that dismissal as a basis for rejecting the Cooperativas' claims. (Cooperativas Mot. ¶¶ 11-13 (asserting that, due to the appeal of the dismissal of the Cooperativas Adversary Proceeding, "the basis used by this Honorable Court to overrule the Credit Unions' objections to the Plan is legally contested, and subject to review").)

The Cooperativas Motion largely reiterates the basic arguments made by the Cooperativas in their objections to confirmation of the Plan of Adjustment and in support of their claims in the Cooperativas Adversary Proceeding. As set forth in the FFCL, the Court thoroughly considered and addressed the dischargeability of claims arising from the Takings Clause that were asserted by numerous parties. (See FFCL ¶¶ 161-78.) That analysis included consideration of the proper framework for evaluating such claims, which, in the context of claims by bondholders, included application of the factors set forth in Penn Central Transport Co. v. New York City, 438 U.S. 104 (1978). (See FFCL ¶¶ 172-74.) The Court determined that all of the Penn Central factors supported the conclusion that discharge of those claims pursuant to the Plan does not violate the Takings Clause. (See id. ¶ 174.) The Court has also already considered and rejected the Cooperativas' arguments that the Plan was proposed in bad faith and that the discharge of liabilities in the Plan is precluded by the Debtors' allegedly inequitable and fraudulent conduct. (See id. ¶¶ 116-18, 261; Adv. Proc. Dismissal Ord. at 28-31.) The Cooperativas have advanced no new arguments here that lead the Court to conclude that there is more than a negligible likelihood that the Cooperativas will prevail on appeal with respect to those arguments.

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the Cooperativas' capital reserves in violation of constitutional, statutory, and common law duties. See Cooperativa de Ahorro y Crédito Abraham Rosa v. Commonwealth of Puerto Rico (In re Fin. Oversight & Mgmt. Bd. for P.R.), Case No. 17 BK 3283 (LTS), 2021 WL 7162427 (D.P.R. Dec. 27, 2021) ("Adversary Proceeding Dismissal Order").

Finally, the Cooperativas' argument concerning the Court's reference to the Adversary Proceeding Dismissal Order is unavailing. In the Cooperativas Adversary Proceeding, the Cooperativas argued that their claims against the Debtors could not be discharged. In the Adversary Proceeding Dismissal Order, the Court concluded that those arguments were without merit, and the Court properly incorporated the reasoning set forth in that order into the FFCL "to the extent [the Cooperativas' objection to confirmation of the Plan] incorporates the allegations set forth in their adversary complaint." (FFCL ¶ 162 n.36.) While the Cooperativas contend that the Court erred in dismissing the Cooperativas Adversary Proceeding, the Court issued a thorough and reasoned opinion concerning the alleged merits of those claims, and the Cooperativas' generalized and conclusory assertions of errors all either lack legal or factual support or merely reiterate arguments considered and rejected by the Court. (See Cooperativas Mot. ¶¶ 12.a (asserting that the allegations in the Cooperativas Adversary Proceeding were "more than plausible" and the Court should have allowed litigation to continue through discovery); 12.b (asserting that the Cooperativas' complaint included "various factual averments" of the Commonwealth's knowing misrepresentations); 12.c (asserting that statutes of limitations were tolled by "plaintiffs' written communications" that would be "produc[ed] . . . during an ordinary discovery proceeding"); 12.d (asserting that the Court's conclusion that plaintiffs failed to plead coercion "erroneously adjudicated factual disputes"); 12.e (asserting that the Court's "premature determination . . . undermines . . . constitutional checks and balances" and intimating that the Court "den[ied] the plaintiffs their constitutional right to ask the government to redress grievances" to hide "inconvenient truths" about government misconduct). The fact that the Cooperativas disagree with and have appealed the Court's determination does not in and of itself improve their chance of success on the merits of their appeal, nor does the

pending appeal render wrongful the Court's reliance on its reasoning as set forth in the Cooperativas Dismissal Order.

Accordingly, neither the Cooperativas nor the Associations have demonstrated that there is a better than negligible chance that their respective Appeals will succeed on the merits, and this factor therefore weighs against granting their Motions.

2. Whether Movants Have Established Irreparable Injury

Movants contend that the irreparable injury requirement for granting a stay pending appeal is satisfied here because, absent a stay, their appeals are likely to be determined to be equitably moot. (Assocs. Mot. ¶ 77; Cooperativas Mot. ¶ 20.) The Associations further assert that implementation of the Plan will result in unspecified "chaos and disarray," cause an "exodus of teachers from the public school system," and result in materially smaller pensions that will make it difficult for teachers to support themselves. (Assocs. Mot. ¶¶ 84-85, 86, 87.) They also contend that the teachers who have already applied to retire will be "excluded from opting to purchase the remaining months of their service and advance their retirement."[10] (Id. ¶ 85.) Furthermore, the Cooperativas argue that the absence of a stay pending appeal will "expose[] them and their members to the irreparable harm of financial and regulatory distress caused by the bankrupt government in contravention to the duties that same government has to safeguard the credit unions and their members." (Cooperativas Mot. ¶ 17.)

Movants' primary claim of irreparable harm arising from implementation of the

[10] In an informative motion filed after the Oversight Board Response to Associations, the Oversight Board stated that it "agrees that people who applied for retirement by the January 31, 2022 deadline may apply to purchase service credit until the freeze date and receive the benefits of such purchased credit when they retire at the end of the current semester." (*Informative Motion of Financial Oversight and Management Board Regarding Status of Plan Implementation* ¶ 17, Docket Entry No. 20165.)

Plan is pecuniary in nature; the Associations and the Cooperativas argue that the claims of teachers (for pension benefits) and credit unions (for damages arising from their purchases of government bonds)[11] should not be impaired and discharged by the Plan. Such grievances are clearly remediable through payment of money and therefore do not, in and of themselves, support a finding of irreparable harm arising from implementation of the Plan. See CoxCom, Inc. v. Chaffee, 536 F.3d 101, 112 (1st Cir. 2008). To circumvent that issue, Movants contend that the impact of implementation of the Plan constitutes irreparable harm because the Appeals are likely to be determined by the First Circuit to be equitably moot absent imposition of a stay, thereby preventing Movants from being made whole if they prevail in the Appeals. Neither the Associations Motion nor the Cooperativas Motion, however, provide substantial analysis of the application of the doctrine of equitable mootness to their appeals. (See, e.g., Assocs. Mot. ¶ 77 (asserting, with no further explanation, that "the lack of a stay will likely render the Teachers' Associations' appeal equitably moot, pursuant to the First Circuit's recent decisions" (citing Pinto-Lugo v. Fin. Oversight & Mgmt. Bd. for P.R (In re Fin. Oversight & Mgmt. Bd. for P.R.), 987 F.3d 173 (1st Cir. 2021) ("Pinto-Lugo"); Cooperativa de Ahorro y Credito Dr. Manuel Zeno Gandia v. Fin. Oversight & Mgmt. Bd. (In re Fin. Oversight & Mgmt. Bd.), 989 F.3d 123 (1st Cir. 2021) ("Cooperativa de Ahorro y Credito Dr. Manuel Zeno Gandia")); Cooperativas Mot. ¶¶ 20-21 (noting "the risk" of mootness and citing, inter alia, Cooperativa de Ahorro y Credito

[11] The Cooperativas' allegations of "financial and regulatory distress" in the event of implementation of the Plan, which provides for less than full payment of the Cooperativas' bond claims, is not stayed are not factually supported in the Cooperativas Motion. The Debtors have not been making payments on account of any government bonds held by the Cooperativas during the course of these Title III cases; accordingly, there is no apparent basis to conclude that staying implementation of the Plan (and prolonging complete non-payment of bond obligations) would protect or improve the Cooperativas' financial or regulatory condition.

Dr. Manuel Zeno Gandia, 989 F.3d 123).) Furthermore, the brief discussion of equitable mootness in the Associations Reply (see Assocs. Reply ¶¶ 77-79) does not include any reference to First Circuit case law, and instead cites most substantially to case law from the Sixth Circuit applying an equitable mootness test that appears materially different than the one applicable in this Circuit, with no discussion of the apparent discrepancy. Compare Ochadleus v. City of Detroit (In re City of Detroit), 838 F.3d 792, 798 (6th Cir. 2016) (stating that the first equitable mootness factor is "whether a stay has been obtained") with Pinto-Lugo, 987 F.3d at 180 (stating that the first equitable mootness factor is "whether the appellant pursued with diligence all available remedies to obtain a stay of execution of the objectionable order").

That discrepancy may well be significant here because, while the First Circuit denied certain appeals of this Court's confirmation of a plan of adjustment for the Puerto Rico Sales Tax Financing Corporation ("COFINA") on the basis of equitable mootness, the procedural history and facts of those cases showed a pervasive failure of the appellants to diligently protect their rights by, among other things, seeking a stay of the confirmation order. The First Circuit repeatedly emphasized in those cases that the appellants had failed to be diligent in pursuing available remedies at practically every opportunity. See Pinto-Lugo, 987 F.3d at 183-85 ("The Pinto-Lugo objectors . . . have done anything but diligently seek to prevent third parties from building reliance interests in the confirmation of the Plan. . . . Like the Pinto-Lugo objectors, the Elliott objectors failed to object to the waiver of the automatic stay of confirmation, did not seek any stay pending appeal, neither sought to expedite the appeal nor objected to requests for extension, and in fact sought to extend the briefing schedule themselves."); Cooperativa de Ahorro y Credito Dr. Manuel Zeno Gandia, 989 F.3d at 130 ("[Appellants] were anything but diligent in seeking to obtain a stay or prevent delay. They

failed to object to the waiver of the automatic stay of confirmation, to seek any stay pending appeal, to request to expedite the appeal, or to object to requests for extension. In fact, on multiple occasions the [Cooperativas] sought to extend the briefing schedule themselves."). That does not appear to be the case here, but Movants have not put forward any explanation of why their apparent diligence would not materially distinguish their Appeals from the appeals with respect to the COFINA plan of adjustment.

The Cooperativas also contend that, even after the Effective Date of the Plan, the Commonwealth will retain sufficient cash and capacity in its fiscal plan so as to be able to pay the Cooperativas' claims in the event that they prevail on their Appeal. (See Cooperativas Mot. ¶ 23 & n.3 ("The evidence submitted and argued by the Oversight Board showed that there is a remaining cash of $532 million on the effective date of the plan, which would enable the Commonwealth to sustain feasibility in the event of a non-dischargeability determination by any appellate court of the taking claimants' claims.").) That assertion, if true, may aid the Cooperativas in establishing that success on appeal would not require the unwinding of complex transactions or otherwise affect reliance interests created by confirmation and implementation of the Plan. Cf. Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 144 (2d Cir. 2005) ("If a stay was sought, we will provide relief if it is at all feasible, that is, unless relief would 'knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court.'"); Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.), 293 B.R. 489, 494 (B.A.P. 9th Cir. 2003) ("Even assuming that debtor's plan is substantially consummated, debtor has not demonstrated that we cannot provide effective relief if the confirmation order were to be reversed. . . . [The] debtor [does not] assert that the plan would be

infeasible if it were required to pay Varela.").

In the near-total absence of any discussion of these issues by the parties, it suffices to say that Movants have relied upon the prospect of equitable mootness as a basis for finding that denial of the Motions presents an "actual and imminent" risk of irreparable injury, P.R. Asphalt, LLC v. Betteroads Asphalt, LLC, Civ. No. 19-1661 (ADC), 2020 WL 698249, at *7 (D.P.R. Feb. 11, 2020), without providing any reasoned analysis as to why the doctrine would apply. It is Movants' burden to demonstrate that there is more than "some possibility of irreparable injury," Nken, 556 U.S. at 434, and their failure to do so, in combination with their low probability of success on the merits, counsels strongly against imposing the "extraordinary remedy" that they have requested. MEDSCI Diagnostics, Inc. v. State Ins. Fund Corp. (In re MEDSCI Diagnostics, Inc.), Adv. No. 10-0094, 2011 WL 280866, at *3 (Bankr. D.P.R. Jan. 25, 2011); Charlesbank Equity Fund II v. Blinds To Go, Inc., 370 F.3d 151, 162 (1st Cir. 2004) ("A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store.").

Because it is Movants' burden to demonstrate the basis for imposing the "extraordinary remedy" of a stay pending appeal, In re MEDSCI Diagnostics, Inc., 2011 WL 280866, at *3, their failure to put flesh on their analysis of the probability and effect of equitable mootness provides the Court with no grounds upon which to determine there is more than "some possibility of irreparable injury" in the absence of a stay. Nken, 556 U.S. at 434.

3. Whether Granting the Stay Will Substantially Injure Other Interested Parties

Regarding the effect of a stay on other interested parties, the Cooperativas argue that the Debtors and other creditors would not be affected by a stay, "especially considering that preservation of the rights and claims" of the Cooperativas in the Cooperativas Adversary

Proceeding, their proof of claim, and any financial contingency required for that preservation, "entails a minimal amount (not even reaching seven tenths of one percent) when compared to" the Plan's scope. (Cooperativas Mot. ¶ 22; see also Assocs. Mot. ¶ 88.) The Cooperativas argue that the Oversight Board has already admitted that making takings claims non-dischargeable would not render the plan infeasible, given the availability of $532 million in remaining cash after making disbursements under the Plan (Cooperativas Mot. ¶ 23 & n.3), and that the Debtors' financial and operational condition would not be affected by a stay (which would simply extend the financial condition of the Commonwealth that has been in place since 2017). (Id. ¶ 24.) As the Associations put it, "the issuance of the stay would merely preserve the status quo, which would not affect any interests involved here because the Confirmation Order is not final and the rights in the Plan are not vested." (Assocs. Mot. ¶ 89.) The Associations add that the appellate procedure may be expedited upon request, and "the First Circuit has cautioned that a stay pending appeal is indispensable for that to progress." (Id.)

Movants' interests are, however, outweighed by the potential harm resulting from a delay in the effective date, which could, at the very worst, undermine the Plan and cause it to unravel, undoing five years of extensive negotiations, because each day the effective date is delayed, the probability increases that opponents of the restructuring will seek new legislation to undermine it, and there is less ground for certainty that the supporting parties will further extend key deadlines. ACC Bondholder Grp. v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.), 361 B.R. 337, 354 (S.D.N.Y. 2007) ("[T]here are additional harms that are substantial but not easily quantifiable, such as the risk that the Plan will fall apart and that the parties will fail to reach a new agreement given the uncertainty associated with what could be a [several]-month stay."); In re Sabine Oil & Gas Corp., 548 B.R. 674, 683 (Bankr. S.D.N.Y. 2016)

("Courts have recognized numerous harms resulting from the postponement of reorganization proceedings, including . . . placing plan settlements in jeopardy[.]")[12] (See Oversight Bd. Resp. to Assocs. ¶ 59; Oversight Bd. Resp. to Cooperativas ¶ 38.) That danger is further compounded by the fact that several settlements underlying the Plan are conditioned on the timely occurrence of the Plan's effective date. (See, e.g., Docket Entry No. 20116-1 ¶ 30; Docket Entry No. 18791-6 §§ 7.1(a)(v), 7.1(b)(viii).) Failure to permit consummation of this long-sought Plan could condemn the Commonwealth to a prolonged and injurious search for other solutions while its economic prospects deteriorate. To call such a risk to the Plan a potential setback would be a gross understatement.

Even if the only consequence of the stay were a delay in the Plan's implementation, such a delay in the Commonwealth's financial recovery would not be inconsequential: preserving the "status quo" would prolong the state of emergency that the Plan addresses and delay new investments in the Commonwealth and the access of the Commonwealth to capital markets, stunting economic growth for as long as appeals remained pending. (Oversight Bd. Resp. to Assocs. ¶ 60; Oversight Bd. Resp. to Cooperativas ¶ 39.)

As to other creditors, the Cooperativas argue that there is no risk that the Debtors will deplete or lose any sources of payment under the Plan if a stay is imposed pending appeal, and that the payments to be paid in cash are already segregated from the Debtors' operational

[12] Most of the other risks identified in In re Sabine Oil & Gas Corp. are also at play here. These include "lost strategic opportunities," "incurrence of administrative and professional expenses," and "exposing the equity to be granted to non-moving creditors to market volatility and other risks." 548 B.R. at 683.

accounts, with remaining payments to be made through the issuance of newly authorized bonds, none of which would be affected by a stay. (Cooperativas Mot. ¶ 24.)[13]

The fact remains, however, that a stay would delay the distribution of about $10.8 billion to creditors and the debt instruments that will replace the currently-outstanding bonds, causing creditors to lose the opportunity to earn investment income on cash that would otherwise be distributed to them under the Plan, and accruals of income on the new instruments. (See Docket Entry No. 20085-1 ¶ 7.) The sheer amount of expected interest at stake in any further delay is sufficient to outweigh the benefit gained by Movants from a stay of the entire Plan pending appeal. See In re Efron, 535 B.R. 516, 520 (Bankr. D.P.R. 2014) ("Delay caused to creditors receiving their payment is also a significant harm warranting denial of a stay.") (quoting In re Public Serv. Co., 116 B.R. 347, 350 (Bankr. D.N.H. 1990); see also In re Adelphia Commc'ns Corp., 361 B.R. at 342 (noting the "weighty interest[]" of "the right of the majority of creditors to receive their distributions."); In re Great Barrington Fair & Amusement, Inc., 53 B.R. 237, 240 (Bankr. D. Mass. 1985) ("The chief harm which will be caused by a stay is the delay which will be suffered by the other creditors."). That it has taken five years from the date of the Debtors' petition for them to be in a position to pay financial creditors accentuates (rather than minimizes) the harm of additional delay: the Debtors, the other creditors, and the people of Puerto Rico have suffered long enough.[14]

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[13] The Associations also reiterate their argument that the Plan depends on enabling legislation as a sort of condition precedent to the viability of the effective date, and since the Plan lacks enabling legislation for changes to the TRS, the effective date should be stalled on that basis. (Assocs. Mot. ¶¶ 3, 5, 12, 16-17, 20, 25, 41, 44, 64-73, 90. See also Docket Entry Nos. 19969-1 ¶ 6; 19969-2 ¶ 6; 19969-3 ¶ 6.) In light of this Court's determination under the first factor, however, this argument is unpersuasive.

[14] The burden that a stay would impose on the Debtors and other creditors would be further magnified, as the PSA Creditors rightly point out (Docket Entry No. 20116 ¶ 2), by causing delays to the Title VI restructurings of the Puerto Rico Convention Center

Although it is unnecessary to determine whether a supersedeas bond would be appropriate because Movants have failed to carry their burden of demonstrating that a stay is justified, the harm that would be suffered by the Debtors and other creditors in the event of a stay is underscored by the magnitude of the potential losses—running into hundreds of millions of dollars—that would have to be covered by an appellate bond. In re Adelphia Commc'ns Corp., 361 B.R. at 368; see also Triple Net Invs. IX, LP v. DJK Residential, LLC (In re DJK Residential, LLC), 2008 WL 650389, at *5 (S.D.N.Y. Mar. 7, 2008).

As the Debtors' experts have indicated in their declarations, based on the conservative assumption that an appeal would be resolved quickly, the value of a bond would have to cover (i) tens of millions of dollars in additional pension liability to active TRS and JRS participants if the Plan's implementation is delayed (Docket Entry No. 20085-2 ¶ 23); (ii) millions of dollars in administrative fees owed to professionals, who would be retained beyond the projected effective date until the Plan's implementation (see, e.g., Oversight Bd. Resp. to Assocs. ¶ 72 & n.22 (basing estimate on recent past fee applications)); (iii) the net loss to the Pension Reserve Trust ("PRT") which, in the event of a delayed effective date beyond June 30, 2022, would result in a total reduction of the PRT's funding over ten years by $960 million (see Docket Entry No. 20085-1 ¶¶ 18-20); and (iv) the net deprivation to creditors of interest

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District Authority and the Puerto Rico Infrastructure Financing Authority, because those restructurings cannot become effective until the effective date of the Plan. (See *Findings of Fact, Conclusions of Law, and Order Approving Qualifying Modification for the Puerto Rico Infrastructure Financing Authority Pursuant to Section 601(M)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act* § 10.1(e), Docket Entry No. 82-1 in Civ. Case No. 21-1492 (LTS); *Findings of Fact, Conclusions of Law, and Order Approving Qualifying Modification for the Puerto Rico Convention Center District Authority Pursuant to Section 601(M)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act* § 10.1(e), Docket Entry No. 72-1 in Civ. Case No. 21-1493 (LTS).)

payments on distributions, in the amount of approximately $45 million per month of delay. (Id. ¶ 21; see also Docket Entry No. 17628-16 at 5).

The Oversight Board argues, based on these estimates, that an appellate bond in anticipation of a six-month stay should be set in the amount of $1.5 billion, an amount that still would not account for the risk that delay would pose to the viability of the entire Plan. (See, e.g., Oversight Bd. Resp. to Assocs. ¶ 76.) Even if, as the Movants argue, the proffered declarations and estimations are not admissible as expert testimony (see Assocs. Reply ¶¶ 127-35; Cooperativas Reply to Oversight Bd. ¶¶ 23-24), the basic logic identifying the categories of harms that would result from a stay, and which would factor into the calculation of potential losses, is sound, and the Court is familiar enough with the magnitude and scope of creditors' claims in these cases (as well as the fact that creditors have waited years to receive any recovery on their claims) to conclude that, regardless of the precise figures, the dollar amounts involved would be substantial.

Therefore, while it is unnecessary to impose or even determine the precise amount of a potential bond at this juncture, considerations that would underpin the computation of a bond demonstrate that the balance of interests tips dramatically against the Movants.[15]

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[15] The Cooperativas argue for the first time in their reply brief that they should, in the alternative, be afforded a stay of the effects of discharge on their claims while the appeal is pending. (Cooperativas Reply to Oversight Bd. ¶ 44.) They argue that, because the Oversight board admits it has $532 million in remaining cash after making the Plan's disbursements, the Commonwealth will have the financial capacity to pay the claims of the Cooperativas if, after a trial on the merits, they are declared non-dischargeable. (Id.) Not only is this argument untimely raised, their argument that the Commonwealth can afford to pay them cuts against their request for a limited stay. Having failed to show any irreparable harm, moreover, it is unclear what a stay would accomplish that could not otherwise be accomplished by a successful appeal in the absence of a stay.

4. Where the Public Interest Lies

Regarding the effect of a stay on the public interest, the Cooperativas argue that the preservation of their claims is required for the protection of the capital and resources of depository institutions and is thus aligned with the Commonwealth's policy objectives of protecting and serving citizens, particularly a constituency of over 1.3 million credit union members and depositors who rely on the preservation of the Cooperativas' rights and claims. (Cooperativas Mot. ¶ 25.) They argue that protecting such rights does not impede the formulation and confirmation of a feasible plan, and "any financial contingency resulting from that preservation does not adversely affect third parties, as the [Cooperativas'] claims are not material amounts as compared to the" debts adjusted under the Plan, "not even reaching seven tenths of one percent (0.658%) of the restructured debt." (Id. ¶ 26.)

The Associations argue that the rights of retirees are a matter of public interest that would not be addressed absent a stay, they argue, with the consequence that the balance of equities favors the rights of the retirees over the desire to expedite the effective date. (Assocs. Mot. ¶ 91.) The Associations also argue that one benefit of staying the proceedings is that more certainty can be provided concerning the terms to be implemented, allowing public officials to prepare for any impending changes. (Id.)

These arguments fail for several reasons. First, the total values of the Movants' interests are but satellites, dwarfed by the central interests of the public in the prompt recovery of Puerto Rico's economy. Any delays in implementing the widely supported Plan, which would allow the Commonwealth to restructure tens of billions in bond debt, regain access to capital markets more rapidly, grow economically, and create many new jobs, would be gravely detrimental, to say nothing of the catastrophic effects that could result from unravelling the Plan altogether.

Second, the Movants' attempts to cast their interests as public interests depend on the untenable assumption that the general public's interest in having appeals resolved outweighs the general public's interest in having the Plan promptly implemented. To formulate that argument is to refute it: the groundswell of stakeholders in Puerto Rico that approved the Plan have no interest in seeing the effective date of the Plan delayed and they only stand to suffer from any such delay. This conclusion is underscored by the unlikelihood of the Movants' success on appeal.

Third, in light of the Court's conclusions regarding Movants' unlikelihood of success on the merits of their Appeals, it must be further concluded that the unlikely benefit of a different outcome on appeal does not justify the imposition of a stay.

III.

CONCLUSION

For the foregoing reasons, the Motions are denied. This Opinion and Order resolves Docket Entry Nos. 19969 and 20035 in Case No. 17-3283.

SO ORDERED.

Dated: March 3, 2022

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge